1958

Martin Machinery, Inc. v. Steevell-Paterson Finance Company and Ralph A. Sleeter, Jr. : Brief of Respondents

Utah Supreme Court

Adam M. Duncan; Duncan and Duncan; Attorneys for Respondent;

In the Supreme Court of the State of Utah

MARTIN MACHINERY, INC.,
Plaintiff and Respondent,

—vs.—

STREVELL-PATERSON FINANCE COMPANY,
a Corporation,
Defendant and Appellant,
RALPH A. SLEETER, JR.,
Defendant.

Case No. 8784

RESPONDENTS' BRIEF

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STATEMENTS OF FACTS

On the 15th day of October, 1955, Defendant Ralph A. Sleeter, Jr. executed a bill of sale wherein he "sells and conveys to Martin Machinery, Inc. of Denver, Colorado," certain machinery and equipment. This bill of sale also contained an express warranty of ownership (Tr. 19).

Thereafter, on the same date, Defendant Sleeter signed an "Order and Conditional Sale Contract" (Tr. 16, 17). This contract contained the usual language and provisos generally employed in conditional sales contracts in the business communty. Neither instrument is am-

biguous and the intended effect and intent of the parties is clear on the face of each.

The facts relative to Respondent, Martin Machinery, Inc. of Denver, Colorado, and its business contacts with Utah are also uncontroverted. Martin Machinery was never listed in a Utah telephone book; never maintained an office in Utah; never hired or employed anyone in Utah; never owned any real or personal property in Utah; never advertised in Utah and required that all its contracts be finalized at its Denver office. Its sole contact with Utah was through Mr. C. Mardee Robinson, an independent manufacturers' representative (Tr. 14, 15). On the 1st day of October, 1957, the Plaintiff moved the District Court for Summary Judgment. All parties had ample opportunity for argument and to present affidavits and other factual material. Briefs were requested by the trial court and counsel for all parties prepared and filed briefs. On the 8th day of November, 1957, the Plaintiff's Motion was granted. It is from this order that the Defendant appeals.

STATEMENT OF POINTS

POINT I. The Trial Court Properly Excluded the Proffered Testimony of Defendant Ralph A. Sleeter, Jr. as Violative of the Parol Evidence Rule.

POINT II. The Trial Court Properly Applied Utah Law in Determining the Effect of an Unrecorded Conditional Sale Contract.

POINT III. Respondent Martin Machinery, Inc. of Denver, Colorado, Was Not "Doing Business" in Utah Within the Meaning of Title 16-8-3 U.C.A. (1953).

ARGUMENT AND AUTHORITIES

POINT I

THE TRIAL COURT PROPERLY EXCLUDED THE PROFFERED TESTIMONY OF DEFENDANT RALPH A. SLEETER, JR., AS VIOLATIVE OF THE PAROL EVIDENCE RULE.

Whether or not a "genuine issue as to any material fact" exists in this case depends on the admissibility of the Sleeter affidavit offered by Appellant (Tr. 24, 25). Appellant admits (Appellant's Brief, p. 8) that this testimony is offered to show the "intent" of Sleeter in signing the bill of sale and Conditional Sale Contract. If, as Respondent contends and the lower court ruled, Sleeter's affidavit is not admissible, then no such issue of fact exists and the ruling of the Trial Court should not be disturbed.

Appellant offered the Sleeter affidavit (Tr. 24, 25) regarding the signing of the instruments to show what was "intended by him [Sleeter]" (Appellant's Brief, p. 8).

The question resolves itself to one of whether the testimony regarding Sleeter's intention to create a "chattel mortgage and security" is admissible to alter the clear, unambiguous terms of the two written instruments. In the leading Utah case, *Fox Film Corporation.* v. *Ogden Theatre Co.,* 82 Utah 279, 17 P. 2d 294, 80 ALR 1299 (1932) cited at Vol. 2, Jones on Evidence, at p. 820, this Court said:

> "Stated in general terms, the force or effect of the [Parol Evidence] Rule is to require, in the absence of a showing of fraud, mistake or accident, the exclusions of parol or extrinsic evidence by which a party seeks to contradict or subtract from the terms of a valid written agreement or instrument."
> "Parol evidence is inadmissible to explain the intention of a maker of a note on the face of which there is no ambiguity but parties' intention must be gathered from the instrument itself."

The *Fox Film* case established a rule which has since been consistently followed in Utah cases and that rule has been cited in virtually every case involving parol evidence decided since 1932.

In *Starley* v. ***Deseret Foods Corp.,*** 93 Utah 577, 74 P. 2d 1221 (1938) evidence was refused as to the intent with which an agent signed a certain instrument. In other Utah cases, the ***Fox Film*** rule has been cited and extrinsic evidence admitted when this Court found a *material ambiguity* making the execution of the contract impossible without such evidence. *Kennedy* v. ***Griffith,*** 98 Utah 183, 95 P. 2d 752 (1939); ***Hawaiian Equipment Co.*** v. *Eimco Corp.,* 115 Utah 590, 207 P. 2d 794 (1949).

In the case before this Court, the Conditional Sale Contract (Tr. 16, 17) and the bill of sale (Tr. 19a) are simple "boiler plate" forms used every day by business

men in conducting business transactions. Neither contains any material ambiguity as to the intention of the parties or the terms agreed upon. Neither by any stretch of the language employed, lends itself to the interpretation that a chattel mortgage was intended. Had the parties, including Sleeter, actually intended to create a mortgagor-mortgagee relationship, they could have simply employed another "boiler plate" form, viz., that used by Sleeter in his later transaction with Appellant (Tr. 10, 12). The rule laid down in the Utah cases cited supra is in accord with the prevailing rule:

> "The Courts are not at liberty to speculate as to the general intention of the parties; they are charged with the duty of ascertaining the meaning of the written language. They cannot give effect to any intention which is not expressed by the language of the instrument, examined in the light of facts that are properly before the Court. For still stronger reason, such evidence cannot be received to contradict the clear and settled meaning of the contract." Jones on Evidence, p. 870.
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> "Extrinsic evidence may be admitted to prove the circumstances under which a contract was made wherever, without the aid of such evidence, it cannot be applied to its property subject matter. Where the parties have deliberately put their contract in writing, complete in itself, and couched in such language as imports a complete legal obligation, parol evidence is not admissible to introduce a term not contained in the writing. The only criterion of completeness is the writing itself." 20 Am. Jur. 1013.

There are few rules of law as susceptible to legal jabberwocky as the Parol Evidence rule. (See various rules cited at "The Law of Evidence in Civil Cases," Burr W. Jones (Fourth Ed.) 818, et seq.) It is submitted

that the basic cause of the multitude of conflicting "exceptions" or "modifications" is a product of the desire of courts of equity to do justice in a given "hard" case. However, the case before this Court is neither a "hard" case nor one in which equity jurisdiction is invoked. Neither do the requisite ambiguity, fraud or mistake appear from the writings, complete in themselves; nor has Appellant claimed any in its briefs to this Court and the Trial Court.

Appellant simply wants Sleeter to testify that the clear and unambiguous bill of sale and Conditional Sale Contract which he signed, were something else—something which he "intended" and preferred, in retrospect, they be, i.e., a chattel mortgage. Research through the plethora of case materials has failed to reveal any case where the Court allowed such a drastic departure from the established rule.

POINT II

THE TRIAL COURT PROPERLY APPLIED UTAH LAW IN DETERMINING THE EFFECT OF AN UNRECORDED CONDITIONAL SALE CONTRACT.

The Trial Court properly ruled on the conflicts of law question of whether the law of Colorado (the place where the Conditional Sale Contract was accepted) or of Utah (the place where the machinery and equipment were delivered and installed) governed.

The recognized leading authority in the field is the American Law Institute's *Restatement of Conflicts.* Counsel for Appellant cites Section 272 of the *Restatement,* but he does not cite *all* of that section. Sub-paragraph C, precisely in point, reads:

"If, by the terms of the agreement of a conditional sale, the chattel is to be delivered by the vendor to the vendee in another state before the transaction is complete, the law of the state where the transaction is completed by delivery to the vendee and not that of the state where the transaction is initiated by the contract determines whether or not the vendor retains title to the chattel.
Illustration:

A sells machinery to B in State X, A agreeing to set up the machinery in State Y to the satisfaction of B. By the agreement, title is to remain in A until payment. The agreement is recorded in X but not in Y. By the law of Y an unrecorded retention of title is void. A sets up the machinery in Y and B accepts it. A retains no title."

Accord:

"The validity of a conditional sale, by which a seller retains title to a chattel until payment of the purchase price by the buyer, is governed by the law of the place of delivery of the chattel to the buyer." Herbert F. Goodrich, *Conflict of Laws,* (Second Ed.) (1938), Section 153.

Furthermore, even applying the Colorado law, Title 20-1-20, Colorado Revised Statutes (1953), cited by counsel for Appellant, in no sense says or means what counsel claims it does. The Statute:

"What Conveyances Have Effect of Chattel Mortgages . . . the provisions of this article shall extend to all bills of sale, deeds of trust and other conveyances of personal property intended by the parties to have the effect of a mortgage or lien upon such property."

It is evidence that the statute cited requiring recordation in Colorado applies only if the parties *intended* to

effect a chattel mortgage. This was clearly not the intention of Martin or Sleeter, as appears on the fact of the Conditional Sale Contract and bill of sale in question.

Point III

PLAINTIFF MARTIN MACHINERY, INC. OF DENVER, COLORADO, WAS NOT "DOING BUSINESS" IN UTAH WITHIN THE MEANING OF TITLE 16-8-3 U.C.A. (1953).

The Trial Court's Finding of Fact, Number 1, as prepared and submitted by counsel for the Plaintiff, is admittedly in error as the fact that the plaintiff is a foreign corporation not engaged in business in Utah is clearly established by the record (Tr. 14, 15). Counsel for Appellant makes much of this point in his brief, yet it is significant that such an obvious error was never brought to the Trial Court's attention by counsel by appropriate and timely motion.

In any event, there is no shred of evidence to sustain the finding. This point is conceded by Appellant (Appellant's Brief, p. 19).

Martin's contacts with Utah were minimal indeed (Tr. 14, 15). Its activities within this state fall squarely within the "mere solicitation" rule and do not subject the Plaintiff to the heavy penalties provided in Title 16-8-3 U.C.A. (1953). For a comprehensive review of the law on this point see 4 Utah Law Review 526 (1954) and cases cited thereat.

CONCLUSION

It is the contention of Respondent that the Trial Court properly excluded the testimony of Sleeter as to his intent to create a chattel mortgage when he executed a bill of sale and Conditional Sale Contract. It is submitted that neither instrument (Tr. 16, 17, 19A) is on its face susceptible to any construction as a chattel mortgage and that any ambiguity thereon is not a material one. Since the Trial Court properly excluded this testimony of Sleeter's intent, no "genuine issue as to material fact" (Rule 56(C) U.R.C.P.) exists and the Motion for Summary Judgment was properly granted.